

WETLANDS COUNCIL

MINUTES

January 9, 2018

The Wetlands Council met on Tuesday, January 9, 2018 in Rooms 112, 113, 114
at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Chairman Chip Kimball, Councilors: Lee Carbonneau, Jim Gove, Carol Henderson, Michael Klass, Deborah Lievens, Richard Mellor, Russ St. Pierre, Seth Prescott, Wendy Weisiger and Bob Wolff

Absentees: Councilor: Sheridan Brown

Also present were: Carolyn Guerdet, Council Clerk and Paula Scott, Appeals Clerk

The regular Wetlands Council meeting was called to order by Chairman Kimball 8:02 a.m. with introductions and a quorum present.

New Business

New Dept. of Environmental Services Commissioner Robert Scott was introduced. He shared he was the Director of the Air Division for 10 years and has worked for the Public Utility Commission the last 5 ½ years. He thanked the Council for their efforts as volunteers. He then gave a review of his position. Wetlands rules are being worked on and the formal process is to start the end of this month. The Governor has set up a regulatory reform committee and a draft bill has been put in. He also reviewed the Drinking Water Ground Water Trust Fund, the result of the MtBE settlement.

1. Approval of Minutes

- ***Councilor Gove made a motion to approve the October 10, 2017 meeting minutes, second by Councilor Lievens. Motion passed unanimously with Councilors Klass, Carbonneau, and Weisiger abstaining.***

2. Public Input: None

Paula Scott, Appeals Clerk

3. Status of Appeals

I. New Appeals

With there being 3 new Council members, Chairman Kimball gave a review of the Appeal process.

Docket No. 17-12 WtC (PNA) – Sullivan County Sportsmen, et al. Appeal

Subject: Denial of Application for Extension of Permit #2008-02781 issued to Dept. of Fish and Game

Hearing Officer: Not assigned

Recused Councilors: Carbonneau, Gove, and Henderson

Status: September 20, 2017 received Preliminary Notice of Appeal and Offer to Enter into Settlement

Discussions. November 3, 2017 received Notice of Appeal. 11/6/17 issued receipt of Appeal letter. 11/22/17 received Appearance of Allen Brooks and Motion to Dismiss for Lack of Standing. 11/29/17 received Assented to Motion to Extend Deadline. 11/29/17 issued Ruling Granting motion to Extend Deadline. December 7, 2017 received Appellants' Objection to Motion to Dismiss for Lack of Standing. 12/12/17 received Appellants' Motion to Strike. 12/14/17 received State's Objection to Appellants' Motion to Strike. 12/18/17 issued Ruling denying Motion to Strike. Council to accept or dismiss appeal. Discussion was held by Council.

- ***Councilor St. Pierre made a motion to deny the Appeal. No second to the motion.***
- ***Councilor Lievens made a motion to accept the Appeal, second by Councilor Wolff. Motion accepted with one nay and 3 recusals.***

Docket No. 17-13 WtC – Kelly Connolly, et al Appeal

Subject: 08/28/17 approval of permit #2017-01434 issued to Mark and Teresa Richey

Hearing Officer: Not assigned

Status: September 28, 2017 received Notice of Appeal. 9/29/17 issued receipt of Appeal letter. October 5, 2017 received Appearance of Russell Hilliard for the permittees. 10/17/17 received Motion for summary Dismissal. 10.27.17 received Reply and Objection to Motion for Summary Dismissal and Provisional Motion to Extend Time for Appeal. 10/31/17 Reply to Objection for Summary Dismissal and Objection to Provisional Motion to Extend Time for Appeal. November 6, 2017 received Replication regarding Motion for Summary Dismissal and Provisional Motion to Extend Time for Appeal. 1/1/5/17 received Further Response to Appellants' replication. Please note the Appeal appears to be untimely and in correctly addressed therefore, the Council may have to determine whether the Appeal was or was not timely filed. Discussion was held.

- ***Councilor Gove made a motion to deny the Appeal, second by Councilor Mellor. Motion passed unanimously.***

Docket No. 17-16 WtC – Bryan and Linda Corr Appeal

Subject: 11/03/17 Administrative Order No. 17-028 WD

Hearing Officer: Not assigned

Status: November 30, 2017 received Petition for Appeal and Appearance of John Cronin. December 4, 2017 issued receipt of Appeal letter. 12/29/17 received the Appearance of Joshua Harrison for the Department. Council to accept or deny the Appeal.

- ***Councilor Henderson made a motion to accept the Appeal, second by Councilor Prescott. Motion passed unanimously.***

II. Decisions that need to be written/finalized and issued.

Docket No. 17-11 WtC – David and Beth Boucher Appeal

Subject: 08/03/17 Letter of Deficiency

Hearing Officer: Not assigned

Status: August 31, 2017 received Notice of Appeal. September 1, 2017 issued receipt of Appeal letter. Please note that the Council may have to determine whether the Appeal is within the Council's jurisdiction at their October 10, 2017 meeting.

It also appeared that the Appeal was insufficient. If the Council determines that the Appeal is within its jurisdiction, it may be necessary for the Appeals Clerk to send a Notice of Insufficient Appeal, as required under Env-WC 203.02, and any insufficiencies corrected by the petitioner, before the Council decides whether to accept or deny the Appeal. October 10, 2017 Council denied the Appeal. 10/11/17 Council issued Order to not accept the Appeal.

III. Hearings or PHCs Pending

Docket No. 17-02 WtC (PNA) - Christopher and Rebecca Crowe Appeal

Subject: 12/21/16 Administrative Order No. 16-033 WD

Hearing Officer: David Conley, Esq. appointed by AG on 5/17/17

Status: January 19, 2017 received Notice of Appeal. 1/20/17 issued Insufficient Appeal letter. February 17, 2017 received Revised Notice of Appeal. March 3, 2017 issued Receipt of Revised Appeal letter. This Appeal appears to be insufficient – no indication a copy was served on the Department. April 11, 2017 Council declined to accept Appeal. 4/12/17 issued Ruling on Acceptance of Appeal-Dismissed. 4/12/17 received Appearance of Atty. Christopher Aslin. 4/21/17 received motion for Reconsideration of Order Dismissing Appeal. May 10, 2017 issued Appeal Accepted under Reconsideration letter. June 8, 2017 issued Notice of Pre-hearing Conference scheduled for July 24, 2017 at 1:30 p.m. 6/30/17 issued Notice of rescheduled Pre-hearing Conference

scheduled for August 14, 2017 at 8:30 a.m. 8/14/17 issued Pre-hearing Order scheduling a 2nd PHC for Oct. 30, 2017 at 11 a.m. October 30, 2017 due to power outage, 2nd PHC was cancelled. November 3, 2017 issued Notice of rescheduled 2nd PHC for 11/13/2017 at 11 a.m. 11/16/17 received Withdrawal of Notice of Appeal. Docket now closed.

Docket No. 17-05 WtC – Mark T. Moore Appeal

Subject: 2/21/17 Denial of Wetlands Permit file #2016-01141

Hearing Officer: David Conley, Esq. appointed by AG on 5/17/17

Status: March 23, 2017 received Petition for Appeal. 3/27/17 received corrected Certification of Service and issued receipt of Appeal letter. Council accepted Appeal May 9, 2017. 5/10/17 issued Appeal Accepted letter. June 8, 2017 issued Notice of Pre-hearing Conference scheduled for July 24, 2017 at 2:30 p.m. 6/15/17 received Assented Motion to Continue Pre-hearing Conference. 6/21/17 issued letter granting Assented to Motion to Continue and rescheduling PHC to Nov. 6, 2017 at 9 a.m. November 2, 2017 received Withdrawal of Appeal. Docket now closed.

Docket No. 17-08 WtC – Robert C. Puff, Jr., et al. Appeal

Subject: 5/8/17 Approval of Wetlands Permit #2017-00756 issued to Joseph Bussichella

Hearing Officer: Not assigned

Status: June 6, 2017 received Petition for Appeal. 6/9/17 issued Insufficient Appeal letter. 6/12/17 received Certification of Susan A. Maus joining Appeal as Appellant. 6/13/17 received Amended Petition for Appeal. 6/14/17 issued Receipt of Amended Appeal letter. Council accepted Appeal at the September 12, 2017 meeting and issued Appeal Accepted letter. September 12, 2017 received Susan A. Maus' Withdrawal as an appellant. 9/22/17 issued Notice of Pre-hearing Conference scheduled for October 30, 2017 at 1 p.m. 10/30/17 due to power outage, PHC was cancelled. 10/31/17 received PHC submission from Attorney Puff. 11/2/17 issued rescheduled PHC notice, new date and time is 11/13/17 at 10 a.m. 11/8/17 received Appearance from Joseph Bussichella. 11/13/17 issued Pre-hearing Order scheduling hearing for February 13, 2018 at 9 a.m.

Docket No. 17-09 WtC – Samuel B. Rowse, Trustee Appeal

Subject: 5/19/17 Denial of Application to repair a boathouse over water, File #2016-00635

Hearing Officer: Not assigned

Status: June 16, 2017 received Appearance for Regina Nadeau and Petition for Appeal. 6/20/17 issued receipt of Appeal letter. Council voted to accept Appeal at the September 12, 2017 meeting and Appeal Accepted letter was issued. 9/22/17 issued Notice Pre-hearing Conference scheduled for October 30, 2017 at 2 p.m. November 1, 2017 issued Notice of postponed PHC and rescheduled it for December 4, 2017 at 11:30 a.m. 12/4/17 Appeal Withdrawn. Docket now closed.

Docket No. 17-10 WtC – Patricia A. Rose Appeal

Subject: 06/15/17 approval of Wetlands Permit #2015-03134 issued to Frank and Laurie Leichthammer

Hearing Officer: Not Assigned

Status: July 14, 2017 received Petition for Appeal. 7/17/17 sent Insufficient Appeal letter. August 16, 2017 received Revised Petition for Appeal. 8/17/17 issued Receipt of revised Appeal letter. 8/30/17 received Appearance of Abigail Karoutas and Christopher Wyskiel for permittee and Motion for Summary Dismissal. October 6, 2017 received Response to Motion for Summary Dismissal. Council to accept or deny Appeal at their October 10, 2017 meeting. 10/10/17 Appeal accepted and denied the Motion for Summary Dismissal. 10/11/17 issue ruling accepting Appeal and Denying Motion for Summary Dismissal. 10/25/17 issued Notice of Pre-hearing Conference scheduled for November 13, 2017 at 9 a.m. 11/7/17 received withdrawal of Abigail Karoutas and Christopher Wyskiel. 1/13/17 issued Pre-hearing Order scheduling Hearing for January 9, 2018 at 9 a.m. 11/20/17 issued Order on permittees' Motion for Summary Dismissal. December 1, 2017 received permittees' response on the Permittees' Response on the Permittee's Motion for Summary Dismissal and Request for Summary Judgment. 12/11/17 issued Order on Permittees' Response on Permittee's Motion for Summary Dismissal and Request for Summary Judgment. 12/13/17 received Permittee's Witness and Exhibit List. 12/18/17 received Appellant's Witness and Exhibit List. Hearing is today.

IV. Inactive/Status Letter or Pending Settlement/Withdrawal

Docket No. 16-17 WtC Robert C. Brown Appeal

Subject: 8/19/16 permit #2009-01521

Hearing Officer: Not assigned May 2, 2017 requested Hearing Officer be assigned.

Status: September 19, 2016 received Petition for Appeal and Motion to Extend Time. November 21, 2016 issued receipt of Appeal letter. December 13, 2016 Council voted to issue a ruling declining to accept Appeal as untimely filed. 12/12/16 received letter dated December 9, 2016 from Appellant. Council needs to issue ruling declining to accept Appeal. 12/29/16 received letter dated December 28, 2016 from Appellant. Discussion was held to clarify the 30 days according to the statute and interpretation. Councilor St. Pierre is to send the 2013 Supreme Court ruling he found to Chairman Kimball. It was decided to have legal counsel review. He will also send the ruling to Council Clerk to be sent to the total Council. January 10, 2017 Council decided to get opinion from their attorney. February 14, 2017 Council voted to rescind 12/13/16 vote of untimely filed and issue Rulings on Timeliness of Appeal and Motion to Extend Time. 2/15/17 issued Insufficient Appeal letter. March 17, 2017 received Revised Notice of Appeal. 3/21/17 issued receipt of Revised Notice of Appeal. This appeal still appears to be insufficient. Council to accept or decline Appeal at April 11, 2017 meeting. April 12, 2017 issued ruling on Acceptance of Appeal - accept provisionally giving him 10 days to say that there was no transmittal letter and certify that he sent the prior copies and whatever response he has here, to the town of Meredith and Atty. Brooks. 4/12/17 received Appearance of Atty. Allen Brooks. 4/21/17 received Certification all parties served. May 2, 2017 issued Appeal accepted letter. 5/11/17 issued Notice of Pre-hearing Conference scheduled for May 25, 2017 at 1 p.m. 5/24/17 received Assented-to Motion to Extend Pretrial Conference. 5/25/17 issued letter granting Motion and rescheduling Pre-hearing Conference for July 17, 2017 at 11:30 a.m. June 7, 2017 issued Notice of postponed Pre-hearing Conference and rescheduling it for July 24, 2017 at 12 noon. 7/21/17 received Motion to Vacate Appearance of Conflict and Motion for Recusal of K. Allen Brooks. 7/24/17 issued Pre-hearing Order scheduling hearing for Oct. 10, 2017 at 9 a.m. 7/28/17 received Objection to Motion to Vacate Appearance of Conflict and Motion for Recusal of K. Allen Brooks. August 7, 2017 received Appellant's Witness and Exhibit List. 8/9/17 issued Decision and Order denying Appellant's Motions to Vacate Appearance of Conflict and Motion for Recusal. 8/10/17 received DES' Witness and Exhibit List. 8/14/17 received Motion to Strike Exhibits. 8/16/17 received Motion in Limine. 8/21/17 received Objection of Improper Filing of DES Motion in Limine, Objection Due to Improper Filing of DES Motion to Strike Exhibits, Objection of Improper Filing of DES Witness and Exhibit List, and Claim of Improper Action of Wetlands Council Hearings Officer and Request for Intervention. September 6, 2017 received Clarification of Appropriateness of 3 Recent Motions Filed. 9/7/17 issued Notice of Decisions addressing prior Motions and Objections. 9/27/17 received Objection to Exhibits and Renewed Motion to Strike. October 4, 2017 received Assented-to Motion to Continue. October 5, 2017 issued letter granting Motion to Continue and ordering Parties to submit a status report by November 19, 2017. 11/15/17 received Appearance of Sean List for Appellant and Joint Status Report. 11/15/16 issued letter regarding Hearing Officer's Order of an update Status Report to be submitted by January 15, 2018. 12/13/17 issued letter granting Motion to Withdraw Appeal. Docket is now closed.

V. Misc.

4. New Business

- ***Councilor Henderson made a motion to nominate Chairman Kimball as Chairman and Deb Lievens as Vice Chair, second by Councilor Gove. Motion passed unanimously.***

5. Old Business

6. Next Meeting –

February 13 at 8 a.m. with a Hearing to follow.

7. Adjournment

- ***Councilor Henderson made a motion to adjourn, second by Councilor Wolff. Motion passed unanimously.***

Meeting adjourned at 9:04 a.m.